

(2010) 03 MAD CK 0179
In the Madras High Court
Case No : C.M.A. No. 371 of 1998

V. Venkadasalam

APPELLANT

Vs

Pallavan Transport Corporation Ltd. (Presently known as
Metropolitan Transport Corporation)

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Motor Accidents Claims Tribunal Rules — Rule 3
Motor Vehicles Act, 1988 — Section 166(A)

Citation : (2010) 03 MAD CK 0179

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : P. Suresh, for the Appellant; No appearance, for the Respondent

Judgement

C.S. Karnan, J.—The above Civil Miscellaneous Appeal has been filed by the appellant/petitioner against the Award and Decree, dated 21.04.1997, made in M.C.O.P. No. 2814 of 1995, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. V, Madras, awarding a compensation of Rs. 1,04,000/- together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment of compensation.

2. Aggrieved by the said Award and Decree, the appellant/petitioner has filed the above appeal praying for additional compensation of Rs. 4,00,000/-.

3. The short facts of the case are as follows:

The petitioner, V. Venkadasalam, is an Advocate of High Court, Madras and earning an income of Rs. 5,000/- per month. He was aged about 33 years at the time of accident. On 28.09.1994, the petitioner was riding his motorcycle bearing registration No.TMS1383 and was proceeding from Royapettah to High Court and nearing the High Court entrance near north fort side road. While so, at about 09.45 a.m. when the petitioner was proceeding from east to take a diversion towards north and driving slowly and cautiously, the PTC bus bearing registration

No.TN01 N1740, driven by its driver in a rash and negligent manner, proceeding from west towards east and unmindful of the stop signal shown by the Traffic Constable on duty, dashed against the petitioner's vehicle, resulting in grievous and multiple injuries to the petitioner.

4. The petitioner was admitted in the Government General Hospital on 28.09.1994, as an inpatient and received medical treatment. Subsequently, he was discharged on 25.11.1994 and thereafter continued to take medical treatment privately and also in the Government Hospital. Subsequent to this, he was once again admitted on 28.06.1995 at Government General Hospital for medical treatment and discharged on 11.07.1995. Due to the accident, he had sustained dislocation of his pelvis, fracture in the right femur and injuries on his left side hip and also multiple injuries all over his body.

5. He is not able to walk as before and not able to attend Court and is also not able to sit continuously for long periods of time.

6. As the accident had been caused by the rash and negligent driving of the driver of the respondent's bus, the respondent as the owner of the vehicle is statutorily and vicariously liable to pay compensation to the petitioner with interest and costs. As such, the petitioner has claimed a compensation of Rs. 6,45,000/- from the respondent u/s 166A of Motor Vehicles Act and Rule 3 of the MACT Rules.

7. The respondent, in his counter has resisted the claim denying the averments in the claim regarding the manner of accident. It has been submitted that on 28.09.1994, at about 08.35 a.m. the PTC bus bearing registration No. TN01 N 1740, Route No. 17R, was proceeding from Iyyappanthangal towards Parrys and at 09.45 a.m. when the bus was proceeding at north fort side, near the back side entrance of High Court, the petitioner, who was riding a motorcycle bearing registration No. TMS1383, came from east and turned to the right to go into the High Court, without observing the said PTC bus and dashed against the right front portion of the bus, fell down and sustained injuries. It has been stated that the petitioner by his negligence had contributed to the accident. It has also been submitted that the claim is bad for non-joinder of the Insurance Company under which the motorcycle bearing registration No. TMS1383 was insured. It has been submitted that the petitioner should prove his age, income and occupation by documentary evidence. It has been submitted that as the PTC driver is not at fault, the respondent is not liable to pay any compensation to the petitioner. It has also been submitted that the claim is excessive and arbitrary and has to be dismissed with costs.

8. The Motor Accident Claims Tribunal framed two issues for the consideration namely:

(i) Who is to be held responsible for the accident?

(ii) Is the petitioner entitled to get compensation? If so, what is the quantum of

compensation, which he is entitled to get?

9. On the petitioner's side two witnesses were examined as PW1 and PW2 and ten documents were marked as Exs.P1 to P10. On the respondent's side one witness was examined as RW1 and no documents were marked.

10. The petitioner was examined as PW1. In his evidence he deposed that on 28.09.1994, at about 09.45 a.m. when he was riding the motorcycle bearing registration No.TMS1383 and proceeding from his house to the high Court, the respondent's bus coming on the opposite side at a high speed had dashed against him; that as a result of this, he had sustained fractures of his bone; that he had taken treatment, as an inpatient, at Government General Hospital for a period of two months; that subsequent to this, he had taken treatment at a private hospital; that the accident had been caused only due to the fault of the respondent's bus driver.

11. The driver of the bus was examined as RW1. In his evidence he deposed that on 28.09.1994, he had driven the bus bearing registration No. TN01 N1740, from Iyyappanthangal towards Parrys; that at 09.45 a.m. when the bus was proceeding on the north side fort street, the petitioner driving his scooter in a rash and negligent manner had dashed against the bus; that after the accident, he had arranged for the petitioner to be admitted at Government General Hospital; that the accident had happened only due to the fault of the petitioner. The RW1, during cross-examination, had admitted that he had been imposed a fine of Rs. 800/- at the Criminal Court. As such, the Tribunal, on considering that the driver had paid the fine of Rs. 800/- imposed on him by the Criminal Court were of the opinion that the accident had been caused only by the fault of the respondent's bus driver. It is also that even in the Judgment made in C.C.S. No. 5296/1994 and passed by the Metropolitan Magistrate No.III, at George Town, it has been ruled that the accident had been caused by the fault of the driver of the bus. It has been stated in the Judgment that the accident had occurred and the petitioner had suffered grievous injuries, only because the driver of the bus had not adhered to traffic rules. As such, the Tribunal, on considering this Judgment, held that the accident had been caused due to the fault of the respondent's bus driver and hence held the respondent liable to pay compensation to the petitioner.

12. The PW1, during examination has deposed that he had sustained fracture in the bone in his right thigh and injuries in his right hand; that he had taken treatment at Government General Hospital, as an inpatient, for two months and in support of his evidence has marked Ex.P1, the Discharge Summary issued at the Hospital. He had further stated that subsequently he had also taken treatment at Aswin Nursing Home. He had stated that he had once again taken treatment at Government Hospital as an inpatient from 28.06.1995 and on 04.07.1995, the steel plate fixed inside his leg was removed. In support of his evidence, he had marked Ex.P2-Series of Medical Prescriptions; Ex.P3, the Medical Bills; Ex.P4-the copy of the Judgment made in Criminal Case; Ex.P5-the Out-patient Chit; Ex.P6-Auditor Certificate and Ex.P7-the Marriage Invitation.

13. Dr. Sai Chandran, who had medically examined the petitioner, was examined as PW2, during his examination before the Tribunal had stated that he had carried out a medical examination of the petitioner on 07.03.1997 and had found that the fractured bone of the left thigh of the petitioner had been set in position by means of supporting steel plate and screws and that as puss had formed in the area wherein surgery had been conducted, the steel plate was removed; that the movements of the muscles in the right thigh had been reduced by 20 Degrees; that there is swelling and pain in the affected portion of his leg; that the central bone in the hip had become bent and had not joined properly; that the movements of the muscles in his hip has also been reduced that the petitioner experiences pain and difficulty, while walking due to this defect. The Doctor had further stated that he had examined the medical treatment records and has certified that the petitioner had sustained a disability of 25% on account of the first injury sustained in his leg and also had sustained a disability of 15%, on account of the second injury in his hip. As such, the Doctor has certified that the petitioner has sustained 40% disability in the accident and has marked Ex.P8, the Disability Certificate and Ex.P9-X"rays.

14. The PW1, on further examination by the Tribunal, had stated that he had sustained a loss of income and in support of this he had marked Ex.P10, the Advocate Certificate; on scrutiny of Ex.P10, it is seen that the petitioner had been earning an income of Rs. 3,000/- per month through his profession as a Lawyer. On scrutiny of Ex.P6-Auditor's Certificate, it is seen that the petitioner had earned an income of Rs. 60,000/- for the period from 01.04.1994 to 28.09.1994. The petitioner had further stated that he had been hospitalised for a period of two months due to the injuries in the accident and that he had been an inpatient during this period. As such, the Tribunal, on considering that the petitioner had received treatment for injuries sustained in the accident for a period of six months and further on holding that the petitioner had been earning an income of Rs. 3,000/- every month, awarded a compensation of Rs. 18,000/- to the petitioner under the head of loss of income. As the petitioner had taken treatment at Government General Hospital and also at Private Hospital, the Tribunal awarded a sum of Rs. 500/- as compensation to the petitioner for transport expenses and also awarded a sum of Rs. 500/- under the head of nutrition. The Tribunal, on scrutiny of the Ex.P3, the medical bills, wherein the medical expenses has been shown as Rs. 9282.88, awarded a compensation of Rs. 10,000/- to the petitioner under the head of medical expenses. The Tribunal further awarded a sum of Rs. 10,000/- as compensation to the petitioner under the head of pain and suffering. The Tribunal, on considering Ex.P8, the Disability Certificate issued by the Doctor, wherein it had been certified that the petitioner had sustained 40% disability in the accident, granted an award of Rs. 40,000/- as compensation to the petitioner, under the head of permanent disability. In addition to this, the Tribunal on considering that the petitioner had sustained a loss in his earning capacity due to the fractures sustained in the bone of his right thigh and injuries sustained in his right arm, awarded a compensation of Rs.

25,000/- to the petitioner under the head of loss of earning capacity. In total, the Tribunal granted an award of Rs. 1,04,000/- as compensation to the petitioner and directed the respondent to deposit the above award together with interest at the rate of 12% per annum from the date of filing the petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 2814 of 1995, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. V, Madras, within a period of eight weeks from the date of its Order. Further, after such deposit was made into Court, the award amount was to be invested in a nationalised bank as fixed deposit for a period of three years. The Advocate fees was fixed at Rs. 2,650/-. The respondent was directed to pay the cost of Rs. 3,074/- to the petitioner.

15. Learned Counsel appearing for the appellant has contended in his appeal that the Tribunal failed to consider that the claimant was about only 32 years at the time of accident and that the permanent disability incurred by him was irreparable. It has also been contended that the Tribunal had erred in holding that the petitioner had taken treatment only for six months. It has been pointed out that the appellant/petitioner had been taking treatment even at the time of hearing of the said O.P and as such, the Tribunal ought to have granted the entire claim for the loss of earning. It has also been pointed out that the Tribunal failed to scrutinise the entire documents filed by the petitioner. It has also been contended that the Tribunal erred in awarding a meagre amount of Rs. 10,000/- as compensation towards pain and suffering especially considering that the accident took place during the marriage time of the petitioner. It has also been contended that an award of Rs. 500/- granted by the Tribunal under the head of nutrition is also meagre and that the amount granted is not sufficient even for a month. It was also pointed out that the Tribunal had erred in not granting any award under the head of damages to clothes. It was also contended that the Tribunal totally failed to consider that the petitioner had incurred expenditure of Rs. 7,000/- towards medical expenses in Ashwin Nursing Home and also paid a sum of Rs. 3,000/- for Physiotherapy treatment. It was also pointed out that the Tribunal failed to consider the future medical expenses, which would be incurred by the appellant/petitioner for treatment of the injuries sustained by him in the accident.

16. As such, the learned Counsel appearing for the appellant has sought an additional compensation amount of Rs. 4,00,000/- to be granted to the appellant/petitioner. In support of his contention, the learned Counsel appearing for the appellant has cited a case Law in R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , wherein the relevant principles relied on while assessment of compensation is as follows:

9. Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money;

whereas non-pecuniary damages are those, which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include: (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life, which may include a variety of matters, ie. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normally longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

17. The learned Counsel appearing for the appellant further argued that due to the accident, the appellant is unable to carry on his lawyer profession. The appellant had started his lawyer profession in the High Court and its Subordinate Courts in the High Court campus. Most of the Courts are functioning only on the first floor and other higher floors. Due to the bone fracture of his leg, and surgical operation done on his leg, he has difficulty in climbing up stairs. As such, his practice has been reduced and his income has been affected. Due to the accident, the appellant had sustained grievous bone fracture injury. Knowing the bad physical condition of the appellant, the marriage arrangement originally scheduled to take place was cancelled. The learned Counsel in support of his argument had cited the marriage invitation marked as Ex.P7 by the appellant before the Tribunal. The learned Counsel appearing for the appellant further argued that the compensation awarded by the Tribunal under the heads were also on the lower side. Due to the accident, the claimant's practice of his noble profession has been affected. The learned Counsel appearing for the appellant further pointed out that his status in the society has been diminished.

18. Considering the facts and circumstances of the case, scrutiny of findings of the Tribunal and after hearing arguments advanced by the learned Counsel appearing for the appellant, this Court is of the view that the award granted by the Tribunal is on the lower side. Hence, this Court enhances the compensation. Further, the Court on considering that as the appellant's marriage fixed at an earlier date, for which the marriage invitation had also been marked as Ex.P7, had to be cancelled due to the accident and further considering that his practice has also been affected, holds that he has been permanently disabled due to the accident. Hence, this Court views that the multiplier method of assessment in computing compensation is proper in the instant case. Accordingly, the Court grants the compensation to the petitioner as follows:

1. The Tribunal awarded a sum of Rs. 40,000/- for 40% disability under the head of permanent disability. This Court, on considering that the age of the claimant was 32 years at the time of accident and his annual salary as Rs. 60,000/-, views that a multiplier of 15 could be adopted in the instant case. Accordingly, this

Court assesses the loss of earning capacity of the petitioner due to 40% disability sustained by him as $40/100 \times \text{Rs. } 60,000/- \times 15$: Rs. 3,60,000/-.

2. The Tribunal awarded a sum of Rs. 10,000/- under the head of medical expenses. This Court confirms the award granted under this head.

3. The Tribunal awarded a sum of Rs. 10,000/- under the head of pain and suffering. This Court enhances the compensation granted under this head to Rs. 25,000/-.

4. The Tribunal awarded a sum of Rs. 25,000/- under the head of loss of earning power. This Court sets aside the same as it is not pertinent.

5. The Tribunal awarded a sum of Rs. 500/- under the head of nutrition. This Court enhances the award granted under this head to Rs. 5,000/-.

6. The Tribunal awarded a sum of Rs. 500/- under the head of transport expenses. This Court enhances the award granted under this head to Rs. 5,000/-.

7. The Tribunal awarded a sum of Rs. 18,000/- under the head of loss of income for a period of six months. This Court enhances the award granted under this head to Rs. 30,000/- as the claimant's income as a lawyer was shown as Rs. 5,000/- per month through an Auditor Certificate marked as Ex.P6.

In total, this Court awards a compensation of Rs. 4,35,000/- to the claimant. The original award amount of Rs. 1,04,000/- was granted by the Tribunal together with interest at the rate of 12% per annum. This Court, after deducting the earlier award granted by the Tribunal, has awarded a sum of Rs. 3,31,000/- as additional compensation to the claimant/appellant, as it is found to be fair and equitable in the circumstances of the case. This additional compensation amount will carry an interest of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation.

19. Therefore, this Court directs the appellant/Transport Corporation to deposit the additional compensation amount, with accrued interest thereon at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation, into the credit of the M.C.O.P. No. 2814 of 1995, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. V, Madras, within a period of four weeks from the date of receipt of this Order.

20. After such deposit has been made into Court, the claimant is permitted to withdraw the entire compensation amount, with accrued interest thereon, lying in the credit of the M.C.O.P. No. 2814 of 1995, on the file of the Motor Accident Claims Tribunal, Small Causes Court No. V, Madras, after filing necessary payment out application in accordance with law.

21. In the result, the above Civil Miscellaneous Appeal is partly allowed and the Award and Decree, dated 21.04.1997, in M.C.O.P. No. 2814 of 1995, passed by the Motor Accident Claims Tribunal, Small Causes Court No. V, Madras, is modified. There shall be no order as to costs.